

**Appl. No.** : **10/035,958**  
**Filed** : **December 26, 2001**

### **REMARKS**

Claims 22, 26-29, and 32-44 are pending and stand rejected by the Examiner. None of the pending claims have been amended. Applicants gratefully acknowledge that Claims 27-29, 32 and 43-44 were indicated as being allowed in the Office Action. Applicants respond below to the specific rejections raised by the Examiner in the Office Action mailed January 27, 2006. For the reasons set forth below, Applicants respectfully traverse.

#### **Information Disclosure Statement**

The Examiner states that the Information Disclosure Statement received by the Patent Office on July 1, 2005 including BLAST search results does not provide an alignment or an indication of the percent identity between the claimed sequences and the reference sequences. As such, the Examiner states that the Information Disclosure Statement does not provide sufficient information to determine if the sequences constitute prior art.

Applicants submit herewith a supplemental information disclosure listing the U.S. patent and International patent application publications cited in the BLAST results, and enclosing a copy of the European patent application and a copy of the non-patent literature cited in the BLAST results. Applicants respectfully request that references be considered and entered.

#### **Rejections Necessitated by Amendment - Rejection Under 35 U.S.C. § 102(e)**

The Examiner has rejected Claims 22, 26, 33, and 35-41 under 35 U.S.C. § 102(e) as allegedly being anticipated by, or in the alternative, as unpatentably obvious under 35 U.S.C. § 103(a), over U.S. Patent Application Publication 2003/0232054 ("Tang et al."), which claims priority as a continuation-in-part of U.S. Patent Application No. 09/491,404 ("the '404 application"), filed January 25, 2000; or over International Patent Publication No. WO 01/55437, which also claims priority as a continuation-in-part of the '404 application. According to the Examiner, both U.S. Patent Application Publication No. 2003/0232054 and International Patent Publication WO 01/55437 disclose a polypeptide (SEQ ID NO:245) that is 99.7% identical to SEQ ID NO:61. The Examiner alleges that U.S. Patent Application Publication No. 2003/0232054 teaches a nucleic acid sequence that encodes SEQ ID NO:245, and that this nucleic acid sequence was first disclosed in the '404 application as SEQ ID NO:1525. Further,

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the Examiner maintains that the '404 application teaches the first 45 amino acids of SEQ ID NO:245, which are identical to Applicants' SEQ ID NO:61. According to the Examiner, even though the '404 application does not disclose the entire sequence of SEQ ID NO:245, Tang et al. were in possession of the isolated polypeptide since "a compound and its properties are inseparable." *Office Action* at 4. The Examiner argues that Tang et al. also teach fusion proteins and proteins lacking signal peptides. Applicants respectfully disagree.

The instant claims have priority at least to March 1, 2000 based upon the PCT priority application, PCT/US00/05601 that was filed on March 1, 2000. As mentioned in the Office Action, both of the Tang et al. references claim priority as continuation-in-part applications of a nonprovisional U.S. application filed on January 25, 2000, the '404 application. Applicants respectfully submit that the '404 application did not disclose the claimed subject matter, and therefore neither Tang et al. reference anticipates the claims because Tang et al. did not possess the claimed subject matter before March 1, 2000.

Applicants disagree with the Examiner's statement that SEQ ID NO:1525 from the '404 application is a nucleic acid sequence that encodes a polypeptide that is 99.7% identical to Applicants' SEQ ID NO:61. Applicants submit herewith Exhibit A which shows the amino acid sequence of the polypeptide encoded by SEQ ID NO:1525. The polypeptide encoded by SEQ ID NO:1525 is not 99.7% identical to Applicants' SEQ ID NO:61. The nucleic acid sequence of Tang et al. (SEQ ID NO:1525) includes different nucleotides that cause a shift in the open reading frame. The nucleic acid sequence of Tang et al. also has an early stop codon in the reading frame. Accordingly, translation of SEQ ID NO:1525 yields a shorter polypeptide, and the amino acid sequence identity between SEQ ID NO:61 and the polypeptide encoded by SEQ ID NO:1525 drops off dramatically following the frame-shift. The amino acid sequence highlighted in bold in section II of Exhibit A corresponds to the polypeptide encoded by SEQ ID NO:1525. An alignment of the polypeptide encoded by SEQ ID NO:1525 and the polypeptide of SEQ ID NO:61 is shown in Exhibit B, attached herewith. Exhibit B shows that the polypeptide encoded by SEQ ID NO:1525 of the '401 application is only 65.9% identical to SEQ ID NO:61. Accordingly, Tang et al. does not anticipate Applicants' claims.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 102(e).

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**Rejections Necessitated by Amendment - Rejection Under 35 U.S.C. § 103(a)**

The Examiner has rejected Claims 22, 26, and 33-42 under 35 U.S.C. § 103(a) as allegedly being unpatentably obvious over Tang et al. in view of Lo et al. ((1998) *Protein Engineering* 11:495-500). According to the Examiner, Tang et al. teaches all of the limitation of Claims 22, 26, and 33-42 except polypeptides fused to an immunoglobulin Fc region. The Examiner maintains that Lo et al. teaches advantages of fusing proteins to Fc regions of immunoglobulins for various purposes.

The Examiner's rejection under 35 U.S.C. § 103(a) is based on the his determination that Tang et al. teaches each and every limitation of Claims 22, 26, 33, and 25-41. However, as discussed above, Tang et al. does not disclose a sequence that is at least 98% identical to SEQ ID NO:61. Accordingly, Tang et al. cannot support a rejection under 35 U.S.C. § 103(a).

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 102(e).

**Conclusion**

The present application is believed to be in condition for allowance, and an early action to that effect is respectfully solicited. Applicants invite the Examiner to call the undersigned if any issues may be resolved through a telephonic conversation.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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